UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	**Administrative Complaint,**
	)	**Compliance Order, and**
	)	**Notice of Opportunity for**
Cecil Dale, Jr.,	)	**Hearing**
Wholesale Distributors, Inc.	)	
1819 South Knoxville Avenue	)	
Russelville, AR 72802-2668	)	
	)	
	)	**Docket No.**
	)	**SWDA-06-2003-5112**
RESPONDENT	)	

COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING

Complainant, Director of the Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency (EPA), Region VI, issues this Complaint, Compliance Order and Notice of Opportunity for Hearing to Cecil Dale, Jr., Wholesale Distributors, Inc. ("Respondent"), Headquarters, 1819 South Knoxville, Russelville, AR 72802-2668

STATEMENT OF AUTHORITY

This Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing (Complaint) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency under 42 U.S.C. § 6961(b)(1) by Section 9006 of the Solid Waste Disposal Act, 42 U.S.C. § 6991e, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation

or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. Part 22. The authority to issue such Complaints has been delegated to the Regional Administrator, EPA Region VI, and has been further delegated by the Regional Administrator to the Multimedia Planning and Permitting Division Director, EPA Region VI, the Complainant in this action.

The underground storage tank (UST) program for Arkansas was authorized pursuant to 40 CFR Part 281 by EPA on February 14, 1995 (60 Fed. Reg. 10331) and became effective on April 25, 1995. The approved State regulations were identified in the Federal Register on January 18, 1996 (61 Fed. Reg. 1214) and are listed at 40 CFR § 282.53.

The Arkansas Department of Environmental Quality's ("ADEQ") has adopted the Environmental Protection Agency's regulations at 40 CFR Part 280 verbatim, under the authority of Arkansas Code Annotated (A.C.A. § 8-7-801 et seq) and the Petroleum Storage Tank Trust Fund Act (A.C.A. § 8-7-901 et seq), in the Arkansas Department of Environmental Quality Regulation 12.

In this action, EPA is enforcing the authorized State regulations; for ease of reference, the corresponding federal regulation is also cited, since the ADEQ adopted and incorporated Federal UST regulations 40 CFR § 280.10 through § 280.74 and § 280.90 through § 280.115, in Arkansas Regulation Number 12, at

Section 12.104(A).[1]

NOTICE TO STATE

Notice of this action was given to the State prior to the issuance of this Complaint pursuant to Section 9006(a)(2) of the Solid Waste Disposal Act, 42 U.S.C. § 6991e(a)(2).

I. PRELIMINARY STATEMENT

1. Cecil Dale, Jr., Wholesale Distributors, Inc. (hereinafter referred to as Respondent) is the Respondent in this case.

2. Respondent is a "person" as defined at Arkansas Regulation 12, 40 CFR § 280.12.

3. Cecil Dale, Jr., Wholesale Distributors, Inc. was incorporated on January 13, 1971, in the State of Arkansas.

4. According to the registration forms submitted by Cecil Dale to ADEQ, Cecil Dale, Jr., Wholesale Distributors, Inc. was the owner and/or operator of the following facilities (collectively, the “facilities”) at the time of the EPA inspections on January 31, 2002 and February 13-15, 2002:

NO.	STATE ID#	NAME	ADDRESS	CITY
1	23000118	Pepper Pan Food Mart	2820 Prince Street	Conway
2	42000076	Paris Exxon	Walnut Street	Paris
3	75000058	Pepper Pan Food Mart	Second and Union	Dardanelle
4	75000063	Pepper Pan Food Mart	501 Main Street	Danville
5	75001623	Plainview Superette	Main Street	Plainview

5. Respondent is “owner” and/or “operator” of underground

[1] Unless otherwise specified, references in this Complaint to “Arkansas Regulation 12" shall mean section 12.104(A), incorporating the Federal UST Regulations.

storage tanks (“USTs”) and ”UST systems” located at these facilities as those terms are defined at Arkansas Regulation 12 (Section 9001 of the Solid Waste Disposal Act, 42 U.S.C. § 6991, 40 CFR § 280.12).

6. Respondent provides fuels for the public at retail facilities.

7. Pursuant to regulations established at ADEQ Regulation 12, 40 CFR § 280.22, Respondent submitted documentation to the ADEQ, to register USTs at the facilities.

8. On January 31, 2002 and February 13-15, 2002, a duly authorized EPA representative (the inspector or inspectors) conducted inspections (the inspections) of the facilities listed in paragraph 4.

9. The USTs which are the subject of this Complaint routinely contain “regulated substances” as defined in Arkansas Regulation 12, 40 CFR § 280.12.

II. VIOLATIONS

COUNT 1A: Failure to provide adequate corrosion protection for metal components of “new” underground piping

10. Paragraphs 1-9 above are realleged and incorporated herein by reference.

11. “New” USTs are those installed after December 22, 1988, as defined in Arkansas Regulation 12, 40 CFR § 280.12.

12. Pursuant to Arkansas Regulation 12, 40 CFR § 280.20(b), owners and operators of new USTs must ensure that piping

that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally-recognized association or independent testing laboratory as follows:

a. The piping is constructed of fiberglass-reinforced plastic; or

b. The piping is constructed of steel and cathodically protected in accordance with Arkansas Regulation 12, 40 CFR § 280.20(b)(2)(i)-(iv)); or

c. The piping is constructed of metal without additional corrosion protection measures provided that all of the requirements of Arkansas Regulation 12, 40 CFR § 280.20(b)(3)(i-ii), are met; or

d. The piping construction and corrosion protection are determined by ADEQ to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in 12(a-c) above.

13. During the inspection of the Respondent's records and Facility No. 3, EPA found that the Respondent had failed to properly design, construct and protect underground piping (flex joints under dispensers and/or pump manifolds) from corrosion, as specified in Arkansas Regulation 12, 40 CFR

§ 280.20(b) for the three UST systems.

14. The three USTs at Facility No. 3 are “new” USTs.

15. The piping systems for the three USTs at Facility No. 3 are in contact with the ground.

16. Therefore, by failing to properly design, construct and protect metal piping from corrosion, Respondent violated Arkansas Regulation 12, 40 CFR § 280.20(b), at each of the three UST systems at Facility No. 3.

17. The period of violation for the three USTs at Facility No. 3 was from January 1, 1990, (date of installation) to February 14, 2002, (when EPA inspectors observed that there was no cathodic protection on the flexjoints under the dispensers and/or pump manifolds). However, due to the statute of limitations of five years, August 1, 1998, was used as the date the violation started. (See penalty calculations for Count 1A).

COUNT 1B: Failure to provide adequate corrosion protection for metal components of “new” underground piping

18. Paragraphs 1-17 above are realleged and incorporated herein by reference.

19. During the inspection of the Respondent's records and Facility Nos. 4 and 5, EPA found that the Respondent had failed to properly design, construct and protect underground piping (flex joints under dispensers and/or pump manifolds) from corrosion, as specified in Arkansas Regulation 12, 40

CFR § 280.20(b), for the five UST systems at those Facilities.

20. The five USTs at Facility Nos. 4 and 5 are “new” USTs.

21. The piping systems for the five USTs at Facility Nos. 4 and 5 are in contact with the ground.

22. Therefore, by failing to properly design, construct and protect metal piping from corrosion, Respondent violated Arkansas Regulation 12, 40 CFR § 280.20(b), at each of the five UST systems at Facility Nos. 4 and 5.

23. The period of violation for the three USTs at Facility No. 4 and was from January 1, 1990 (date of installation), and for the two USTs at Facility No. 5 was from August 1, 1994 (date of installation), to January 31, 2002, when EPA inspectors observed that there was no cathodic protection on the flexjoints under the dispensers and/or pump manifolds. However, due to the statute of limitations of five years, August 1, 1998, was used as the date violation started. (See penalty calculations for Count 1B).

COUNT 2: Failure to provide adequate corrosion protection for metal components of “existing” underground piping

24. Paragraphs 1-23 above are realleged and incorporated herein by reference.

25. “Existing” USTs are those installed on or before December 22, 1988, as defined at Arkansas Regulation 12, 40 CFR § 280.12.

26. Pursuant to Arkansas Regulation 12, 40 CFR § 280.21, no

later than December 22, 1998, all Existing UST systems were required to comply with:

(a) the new UST performance standards under Arkansas Regulation 12, 40 CFR § 280.20, or;

(b) the upgrade requirements of Arkansas Regulation 12, 40 CFR § 280.21, which includes:

(1) cathodic protection; and

(2) field-installed cathodic protection systems designed by a corrosion expert;

(3) impressed current systems designed to allow determination of current operating status as required in Arkansas Regulation 12, 40 CFR § 280.31; or

(4) cathodic protection systems operated and maintained in accordance with Arkansas Regulation 12, 40 CFR § 280.31, or guidelines established by the implementing agency); or

(c) undertake closure.

27. During the inspection of the Respondent's records and Facility No. 2, EPA found that the Respondent had failed to comply with the new UST performance standards, the “Existing” UST piping requirements, or undertake closure by December 22, 1998 for seven Existing USTs (Tanks 1, 2, 4-8, see Attachment B).

28. Therefore, the Respondent violated Arkansas Regulation 12, 40 CFR § 280.21(a), at Facility No. 2, by failing to comply

with the new UST performance standards, the Existing UST piping requirements, or undertake closure by December 22, 1998 for seven Existing USTs at Facility No. 2.

29. The period of violation is from December 22, 1998, (deadline to upgrade) to February 14, 2002, the date EPA inspectors observed that the Existing USTs at Facility No. 2 failed to comply with the new UST performance standards, the Existing UST piping requirements, or undertake closure by December 22, 1998 for seven Existing USTs (Tanks 1, 2, 4-8, see Attachment B). (See penalty calculations for Count 2).

COUNT 3: Failure to operate cathodic protection system continuously

30. Paragraphs 1-29 above are realleged and incorporated herein by reference.

31. According to Arkansas Regulation 12, 40 CFR § 280.31(a), all corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of portions of the tank and piping that routinely contain regulated substances and are in contact with the ground.

32. During the inspection of the Respondent's records and Facility No. 2, EPA determined that there were five Existing USTs (Tank Nos. 4-8, see Attachment B) that failed to have continuous corrosion protection on the metal components of the USTs and piping that routinely contain regulated

substances and are in contact with the ground, from December 22, 1998 (deadline to upgrade), to February 15, 2002, the date of the inspection.

COUNT 4: Failure to provide spill and overfill prevention equipment

33. Paragraphs 1-32 above are realleged and incorporated herein by reference.

34. According to Arkansas Regulation 12, 40 CFR § 280.21(d), all Existing USTs must comply with new UST system spill and overfill prevention equipment requirements specified in Arkansas Regulation 12, 40 CFR § 280.20(c).

35. During the inspection of Respondent's Facility No. 2, EPA inspectors determined that five Existing USTs (Tank Nos. 4-8, see Attachment B) did not have the spill and overfill prevention equipment specified in Arkansas Regulation 12, 40 CFR § 280.20(c).

36. The installation date of the five Existing USTs at Facility No. 2 is believed to have occurred between 1950 and 1970. The period of violation is from December 22, 1998 (deadline to upgrade) to February 15, 2002, the date EPA inspectors determined five Existing USTs at Facility No. 2 (Tank Nos. 4-8, see Attachment B) did not have the spill and overfill prevention equipment specified in Arkansas Regulation 12, 40 CFR § 280.20(c). (See penalty calculations for Count 4).

COUNT 5A: Failure to test corrosion protection system

37. Paragraphs 1-36 above are realleged and incorporated herein by reference.

38. According to Arkansas Regulation 12, 40 CFR § 280.31(a)(1), all corrosion protection systems must be tested within six months of installation of a cathodic protection system then every three years thereafter to determine whether corrosion (cathodic) protection is adequate as required by Arkansas Regulation 12, 40 CFR § 280.31(b)(2).

39. During the inspection of the Respondent's records and Facility No. 1, EPA determined that the Respondent failed to test the cathodic protection system of the tanks within six months of installation and every three years thereafter to ensure that the corrosion protection was adequately operating in accordance with Arkansas Regulation 12, 40 CFR § 280.31(b)(2).

40. Respondent installed the two USTs at Facility No. 1 on February 1, 1995. Therefore, the first corrosion test should have been conducted by August 1, 1995. No records of corrosion protection tests were in the Respondent’s file upon EPA’s review.

41. Arkansas Regulation 12, 40 CFR § 280.31(b)(2), requires the Respondent to provide the results of the testing of the last two inspections of the cathodic protection system.

42. Respondent’s failure to test the cathodic protection system of the two USTs at Facility No. 1, from August 1, 1995, to

February 13, 2002, the date EPA inspectors determined that the cathodic protection tests had not been performed, is a violation of Arkansas Regulation 12, 40 CFR § 280.31. However, due to the statute of limitations of five years, August 1, 1998, was used as the date violation started. (See penalty calculations for Count 5A).

COUNT 5B: Failure to test corrosion protection system

43. Paragraphs 1-42 above are realleged and incorporated herein by reference.

44. According to Arkansas Regulation 12, 40 CFR § 280.31(a)(1), all corrosion protection systems must be tested within six months of installation of a cathodic protection system then every three years thereafter to determine whether corrosion (cathodic) protection is adequate as required by Arkansas Regulation 12, 40 CFR § 280.31(b)(2).

45. During the inspection of the Respondent's records and Facility No. 2, EPA determined that the Respondent failed to test the cathodic protection system of three of the USTs (Tank Nos. 1-3, see Attachment B) within six months of installation and every three years thereafter to ensure that the corrosion protection was adequately operating in accordance with Arkansas Regulation 12, 40 CFR § 280.31(b)(2).

46. Respondent installed two USTs (Tank Nos. 1 and 2) at Facility No. 2 on January 1, 1981, and one UST (Tank No. 3)

at Facility No. 2 on August 21, 1991. Therefore, the first corrosion tests should have been conducted by December 22, 1998 and February 21, 1992. No records of corrosion protection tests were in the Respondent's file upon EPA's review.

47. Arkansas Regulation 12, 40 CFR § 280.31(b)(2), requires the Respondent to provide the results of the testing of the last two inspections of the cathodic protection system.

48. Respondent's failure to test the cathodic protection system of the two USTs at Facility No. 2 (Tank Nos. 1 and 2, see Attachment B), from December 22, 1998, to February 15, 2002, and one UST at Facility No. 2 (Tank No. 3, see Attachment B), from February 21, 1992 to February 15, 2002, the date that EPA inspectors determined that cathodic protection tests had not been performed, is a violation of Arkansas Regulation 12, 40 CFR § 280.31. However, due to the statute of limitations of five years, and the fact that the penalty was calculated on a facility basis rather than a tank-by-tank basis, December 22, 1998, was used as the date violation started for all three USTs. (See penalty calculations for Count 5B).

COUNT 5C: Failure to test corrosion protection system

49. Paragraphs 1-48 above are realleged and incorporated herein by reference.

50. According to Arkansas Regulation 12, 40 CFR § 280.31(a)(1),

all corrosion protection systems must be tested within six months of installation of a cathodic protection system then every three years thereafter to determine whether corrosion (cathodic) protection is adequate as required by Arkansas Regulation 12, 40 CFR § 280.31(b)(2).

51. During the inspection of the Respondent's records and Facility No. 3, EPA determined that the Respondent failed to test the cathodic protection system of the USTs within six months of installation and every three years thereafter to ensure that the corrosion protection was adequately operating in accordance with Arkansas Regulation 12, 40 CFR § 280.31(b)(2).

52. Respondent installed the three USTs at Facility No. 3 on January 1, 1990. Therefore, the first corrosion test should have been conducted by July 1, 1990. No records of corrosion protection tests were in the Respondent’s file upon EPA’s review.

53. Arkansas Regulation 12, 40 CFR § 280.31(b)(2), requires the Respondent to provide the results of the testing of the last two inspections of the cathodic protection system.

54. Respondent’s failure to test the cathodic protection system of the three USTs at Facility No. 3, from July 1, 1990, to February 14, 2002, the date EPA inspectors determined that cathodic protection tests had not been performed, is a violation of Arkansas Regulation 12, 40 CFR § 280.31.

However, due to the statute of limitations of five years, August 1, 1998, was used as the date violation started. (See penalty calculations for Count 5C).

COUNT 5D: Failure to test corrosion protection system

55. Paragraphs 1-54 above are realleged and incorporated herein by reference.

56. According to Arkansas Regulation 12, 40 CFR § 280.31(a)(1), all corrosion protection systems must be tested within six months of installation of a cathodic protection system then every three years thereafter to determine whether corrosion (cathodic) protection is adequate as required by Arkansas Regulation 12, 40 CFR § 280.31(b)(2).

57. During the inspection of the Respondent's records and Facility Nos. 4 and 5, EPA determined that the Respondent failed to test the cathodic protection system of the USTs within six months of installation and every three years thereafter to ensure that the corrosion protection was adequately operating in accordance with Arkansas Regulation 12, 40 CFR § 280.31(b)(2).

58. Respondent installed the three USTs at Facility No. 4 on January 1, 1990 and the two USTs at Facility No. 5 on August 1, 1994. Therefore, the first corrosion test should have been conducted by July 1, 1990 on the three USTs at Facility No. 4, and February 1, 1995 on the two USTs at Facility No. 5. No records of corrosion protection tests were in the

Respondent's file upon EPA's review.

59. Arkansas Regulation 12, 40 CFR § 280.31(b)(2), requires the Respondent to provide the results of the testing of the last two inspections of the cathodic protection system.

60. Respondent's failure to test the cathodic protection system of the three USTs at Facility No. 4 from July 1, 1990 to February 13, 2002, and the two USTs at Facility No. 5, from February 1, 1995, to February 13, 2002, the date EPA inspectors determined that cathodic protection tests had not been performed, is a violation of Arkansas Regulation 12, 40 CFR § 280.31. However, due to the statute of limitations of five years, August 1, 1998, was used as the date violation started. (See penalty calculations for Count 5D).

COUNT 6: Failure to demonstrate adequate financial responsibility

61. Paragraphs 1-60 above are realleged and incorporated herein by reference.

62. Pursuant to Arkansas Regulation 12, 40 CFR § 280.93, owners or operators of petroleum UST systems must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.

63. Owners or operators of petroleum USTs that are located at petroleum marketing facilities, or that handle an average of

more than 10,000 gallons of petroleum per month based on annual throughput for the previous calender year, must provide financial responsibility of at least $1 million per occurrence.

64. In addition, owners or operators of petroleum UST systems must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs in at least the following annual aggregate amounts:

    a)For owners or operators of 1 to 100 petroleum USTs, $1 million; and

    b)For owners of 101 or more petroleum USTs, $2 million.

65. As allowed under the ADEQ Regulation 12, the ADEQ offers owners and operators partial coverage for demonstrating financial responsibility through the Arkansas Petroleum Storage Tank Trust Fund (Trust Fund), provided the owner or operator incurs a minimum of $7,500 for corrective action expenses and/or $7,500 for third-party claims, and provided the annual fees are paid to ADEQ by June 30 of each calender year.

66. According to the Arkansas Regulation 12, 12.203(E), Storage Tank Registration Fees, if the annual registration fee required by this Chapter is not paid within thirty (30) days of the billing date of the applicable fee invoice from the

Department, a late fee shall be imposed in the amount of five dollars ($5) per storage tank.

67. According to the Arkansas Regulation 12, 12.203(F), nonpayment of any fees required by this Chapter shall constitute grounds for legal action by the Department, and may result in assessment of civil penalties as provided in Chapter Eight.

68. According to Arkansas Regulation 12, 12.302(D), in order to be eligible for the trust fund, the owner or operator must register each petroleum storage tank and pay the annual storage tank fees in accordance with Arkansas Regulation 12, 12.203(C) and (E)(within 30 days of the billing date), for each tank until such time as the permanent closure requirements of Arkansas Regulation 12 are satisfied.

69. During the inspection of the Respondent's records and Facility No. 2, EPA determined that the Respondent failed to pay the applicable registration fees by June 30, 2001, (30 days after the billing date June 1, 2001) in accordance with the Arkansas Trust Fund requirements for Facility No. 2, Paris Exxon.

70. Respondent’s failure to pay the applicable registration fees by the regulatory deadline caused the owner and operator to be ineligible for partial coverage under the Arkansas Petroleum Storage Tank Trust Fund, and without the appropriate financial responsibility coverage if a release

had occurred at Facility No. 2.

71. Failure to provide adequate financial responsibility is a violation of Arkansas Regulation 12, 40 CFR § 280.93.

72. The period of violation for Facility No. 2 is from June 30, 2001 (due date), to October 15, 2001, the time that the fees were actually paid according to the Arkansas Department of Environmental Quality. *(See penalty calculations for Count 6)*.

COUNT 7A: Failure to provide adequate release detection for USTs

73. Paragraphs 1-72 above are realleged and incorporated herein by reference.

74. According to Arkansas Regulation 12, 40 CFR § 280.40(a), all owners and operators of USTs must provide a method of release detection adequate to meet the requirements of Arkansas Regulation 12, 40 CFR §§ 280.43(a) - 280.43(h).

75. During the inspection of the Respondent's records and Facility No. 1, EPA determined and observed that the Respondent failed to employ a method of release detection adequate to meet the requirements of the Arkansas Regulation 12 and 40 CFR §§ 280.43(a) - 280.43(h) for the two USTs.

76. Arkansas Regulation 12, 40 CFR § 280.34(b)(4), requires the owners and operators of USTs to maintain the results of the last twelve months of release detection monitoring.

77. At EPA’s inspection of Respondent’s records and Facility No. 1, Respondent could not establish that it maintained

required release detection monitoring information.

78. Respondent’s failure to provide adequate release detection and records of release detection monitoring for the two USTs at Facility No. 1, from February 13, 2001, to February 13, 2002, the date EPA inspected Facility No. 1, is a violation of Arkansas Regulation 12, 40 CFR § 280.40(a). (See penalty calculations for Count 7A).

COUNT 7B: Failure to provide adequate release detection for USTs

79. Paragraphs 1-78 above are realleged and incorporated herein by reference.

80. According to Arkansas Regulation 12, 40 CFR § 280.40(a), all owners and operators of USTs must provide a method of release detection adequate to meet the requirements of Arkansas Regulation 12, 40 CFR §§ 280.43(a) - 280.43(h).

81. During the inspection of the Respondent's records and Facility No. 2, EPA determined and observed that the Respondent failed to employ a method of release detection adequate to meet the requirements of the Arkansas Regulation 12 and 40 CFR §§ 280.43(a) - 280.43(h) for the eight USTs.

82. Arkansas Regulation 12, 40 CFR § 280.34(b)(4), requires the owners and operators of USTs to maintain the results of the last twelve months of release detection monitoring.

83. At EPA’s inspection of Respondent’s records and Facility No. 2, Respondent could not establish that it maintained required release detection monitoring information.

84. Respondent’s failure to provide adequate release detection and records of release detection monitoring for the eight USTs at Facility No. 2, from February 15, 2001, to February 15, 2002, the date EPA inspected Facility No. 2, is a violation of Arkansas Regulation 12, 40 CFR § 280.40(a). (See penalty calculations for Count 7B).

COUNT 7C: Failure to provide adequate release detection for USTs

85. Paragraphs 1-84 above are realleged and incorporated herein by reference.

86. According to Arkansas Regulation 12, 40 CFR § 280.40(a), all owners and operators of USTs must provide a method of release detection adequate to meet the requirements of Arkansas Regulation 12, 40 CFR §§ 280.43(a) - 280.43(h).

87. During the inspection of the Respondent's records and Facility No. 3, EPA determined and observed that the Respondent failed to employ a method of release detection adequate to meet the requirements of the Arkansas Regulation 12 and 40 CFR §§ 280.43(a) - 280.43(h) for the three USTs.

88. Arkansas Regulation 12, 40 CFR § 280.34(b)(4), requires the owners and operators to maintain the results of the last twelve months of release detection monitoring.

89. At EPA’s inspection of Respondent’s records and Facility No. 3, Respondent could not establish that it maintained required release detection monitoring information.

90. Respondent’s failure to provide adequate release detection

and records of release detection monitoring for the three USTs at Facility No. 3, from February 14, 2001, to February 14, 2002, the date EPA inspected Facility No. 3, is a violation of Arkansas Regulation 12, 40 CFR § 280.40(a). (See penalty calculations for Count 7C).

COUNT 7D: Failure to provide adequate release detection for USTs

91. Paragraphs 1-90 above are realleged and incorporated herein by reference.

92. According to Arkansas Regulation 12, 40 CFR § 280.40(a), all owners and operators of USTs must provide a method of release detection adequate to meet the requirements of Arkansas Regulation 12, 40 CFR §§ 280.43(a) - 280.43(h).

93. During the inspection of the Respondent's records and Facility Nos. 4 and 5, EPA determined and observed that the Respondent failed to employ a method of release detection adequate to meet the requirements of the Arkansas Regulation 12 and 40 CFR §§ 280.43(a) - 280.43(h) for the five USTs at those Facilities.

94. Arkansas Regulation 12, 40 CFR § 280.34(b)(4), requires the owners and operators of UST system maintain the results of the last twelve months of release detection monitoring.

95. At EPA’s inspection of Respondent’s records and Facility Nos. 4 and 5, Respondent could not establish that it maintained required release detection monitoring information.

96. Respondent's failure to provide release detection for the three USTs at Facility No. 4 and the two USTs at Facility No. 5, from January 31, 2001, to January 31, 2002, the date EPA inspected Facility Nos. 4 and 5, is a violation of Arkansas Regulation 12, 40 CFR § 280.40(a). (See penalty calculations for Count 7D).

COUNT 8A: Failure to provide adequate release detection for piping

97. Paragraphs 1-96 above are realleged and incorporated herein by reference.

98. According to Arkansas Regulation 12, 40 CFR §§ 280.41(b) and 280.44, all owners and operators of USTs must provide an adequate release detection method for piping. For pressurized piping, the owner or operator must: (1) install an automatic line leak detector that can meet the requirements of Arkansas Regulation 12, 40 CFR § 280.44(a); and (2) conduct an annual line tightness test in accordance with Arkansas Regulation 12, 40 CFR § 280.44(b); or conduct monthly monitoring using any of the monthly monitoring methods allowed in Arkansas Regulation 12, 40 CFR § 280.43(e) through (h). For suction piping, the owner or operator must conduct line tightness testing every three years in accordance with Arkansas Regulation 12, 40 CFR § 280.44(b), or conduct monthly monitoring in accordance with Arkansas Regulation 12, 40 CFR § 280.43(a) through (h),

unless it meets the suction piping exemption from release detection under Arkansas Regulation 12, 40 CFR § 280.41(b)(2)(i) through (v).

99. During the inspection of the Respondent's records and Facility No. 1, Respondent failed to produce evidence to representatives of EPA that it employed a method of release detection adequate to meet the requirements of Arkansas Regulation 12 and 40 CFR § 280.41(b) for the piping (lines) at the two UST systems.

100. Arkansas Regulation 12, 40 CFR § 280.34(b)(4), requires the owners and operators of UST systems to maintain the results of the last twelve months of release detection monitoring.

101. Respondent’s failure to provide release detection for the two lines at Facility No. 1, from February 13, 2001, to February 13, 2002, the date EPA inspected Facility No. 1, is a violation of Arkansas Regulation 12, 40 CFR § 280.44. (See penalty calculations for Count 8A).

COUNT 8B: Failure to provide adequate release detection for piping

102. Paragraphs 1-101 above are realleged and incorporated herein by reference.

103. According to Arkansas Regulation 12, 40 CFR §§ 280.41(b) and 280.44, all owners and operators of USTs must provide an adequate release detection method for piping. For pressurized piping, the owner or operator must: (1) install

an automatic line leak detector that can meet the requirements of Arkansas Regulation 12, 40 CFR § 280.44(a); and (2) conduct an annual line tightness test in accordance with Arkansas Regulation 12, 40 CFR § 280.44(b); or conduct monthly monitoring using any of the monthly monitoring methods allowed in Arkansas Regulation 12, 40 CFR § 280.43(e) through (h). For suction piping, the owner or operator must conduct line tightness testing every three years in accordance with Arkansas Regulation 12, 40 CFR § 280.44(b), or conduct monthly monitoring in accordance with Arkansas Regulation 12, 40 CFR § 280.43(a) through (h), unless it meets the suction piping exemption from release detection under Arkansas Regulation 12, 40 CFR § 280.41(b)(2)(i) through (v).

104. During the inspection of the Respondent's records and Facility No. 2, Respondent failed to produce evidence to representatives of EPA that it employed a method of release detection adequate to meet the requirements of Arkansas Regulation 12 and 40 CFR § 280.41(b) for the piping (lines) at the eight UST systems.

105. Arkansas Regulation 12, 40 CFR § 280.34(b)(4), requires the owners and operators of UST systems to maintain the results of the last twelve months of release detection monitoring.

106. Respondent’s failure to provide release detection for the eight lines at Facility No. 2, from February 15, 2001, to

February 15, 2002, the date EPA inspected Facility No. 2, is a violation of Arkansas Regulation 12, 40 CFR § 280.44. (See penalty calculations for Count 8B).

COUNT 8C: Failure to provide adequate release detection for piping

107. Paragraphs 1-106 above are realleged and incorporated herein by reference.

108. According to Arkansas Regulation 12, 40 CFR §§ 280.41(b) and 280.44, all owners and operators of USTs must provide an adequate release detection method for piping. For pressurized piping, the owner or operator must: (1) install an automatic line leak detector that can meet the requirements of Arkansas Regulation 12, 40 CFR § 280.44(a); and (2) conduct an annual line tightness test in accordance with Arkansas Regulation 12, 40 CFR § 280.44(b); or conduct monthly monitoring using any of the monthly monitoring methods allowed in Arkansas Regulation 12, 40 CFR § 280.43(e) through (h). For suction piping, the owner or operator must conduct line tightness testing every three years in accordance with Arkansas Regulation 12, 40 CFR § 280.44(b), or conduct monthly monitoring in accordance with Arkansas Regulation 12, 40 CFR § 280.43(a) through (h), unless it meets the suction piping exemption from release detection under Arkansas Regulation 12, 40 CFR § 280.41(b)(2)(i) through (v).

109. During the inspection of the Respondent's records and Facility No. 3, Respondent failed to produce evidence to representatives of EPA that it employed a method of release detection adequate to meet the requirements of Arkansas Regulation 12 and 40 CFR § 280.41(b) for the piping (lines) at the three UST systems.

110. Arkansas Regulation 12, 40 CFR § 280.34(b)(4), requires the owners and operators of UST systems to maintain the results of the last twelve months of release detection monitoring.

111. Respondent’s failure to provide release detection for the three lines at Facility No. 3, from February 14, 2001, to February 14, 2002, the date EPA inspected Facility No. 3, is a violation of Arkansas Regulation 12, 40 CFR § 280.44. (See penalty calculations for Count 8C).

COUNT 8D: Failure to provide adequate release detection for piping

112. Paragraphs 1-111 above are realleged and incorporated herein by reference.

113. According to Arkansas Regulation 12, 40 CFR §§ 280.41(b) and 280.44, all owners and operators of USTs must provide an adequate release detection method for piping. For pressurized piping, the owner or operator must: (1) install an automatic line leak detector that can meet the requirements of Arkansas Regulation 12, 40 CFR § 280.44(a); and (2) conduct an annual line tightness test in accordance

with Arkansas Regulation 12, 40 CFR § 280.44(b); or conduct monthly monitoring using any of the monthly monitoring methods allowed in Arkansas Regulation 12, 40 CFR § 280.43(e) through (h). For suction piping, the owner or operator must conduct line tightness testing every three years in accordance with Arkansas Regulation 12, 40 CFR § 280.44(b), or conduct monthly monitoring in accordance with Arkansas Regulation 12, 40 CFR § 280.43(a) through (h), unless it meets the suction piping exemption from release detection under Arkansas Regulation 12, 40 CFR § 280.41(b)(2)(i) through (v).

114. During the inspection of the Respondent's records and Facility Nos. 4 and 5, Respondent failed to produce evidence to representatives of EPA that it employed a method of release detection adequate to meet the requirements of Arkansas Regulation 12 and 40 CFR § 280.41(b) for the piping (lines) at the five UST systems at those Facilities.

115. Arkansas Regulation 12, 40 CFR § 280.34(b)(4) requires the Respondent to provide the results of the last twelve months of release detection monitoring.

116. Respondent’s failure to provide release detection for the five lines at Facility Nos. 4 and 5, from January 31, 2001, to January 31, 2002, the date EPA inspected Facility Nos. 4 and 5, is a violation of Arkansas Regulation 12, 40 CFR § 280.44. (See penalty calculations for Count 8D).

III. COMPLIANCE ORDER

Not later than sixty (60) days from the date of receipt of this Complaint, Respondent shall:

1. Provide written documentation verifying that all required cathodic protection systems for each UST at every Facility listed in this Complaint for tanks, metal piping and metal piping components (pump housing, flex joints, etc.), have been tested and are properly operating within the three years prior to the receipt of this Complaint. If the required cathodic protection systems have not been tested and shown to be operating properly, within the previous three years of the receipt of this Complaint, all such cathodic protection systems must be tested within 60 days from the receipt of this Complaint and be shown: (a) to meet new UST performance standards or have been upgraded to meet the requirements of Arkansas Regulation 12; and (b) be operating properly;
2. Comply with new UST system spill and overfill prevention equipment;
3. Provide evidence it maintains required release detection monitoring information and adequate release detection on every UST and UST piping system referenced in this Complaint; and
4. Provide written documentation verifying that the owner

or operator has adequate financial responsibility.

5. Please submit all information for each item in Paragraph 1 through 4 above in a logically sequenced, bound format.

6. Respondent shall provide the documentation of compliance required in Paragraphs 1 through 4 above to:

(EPA) Ms. Tracie Donaldson, Enforcement Officer
UST/Solid Waste Section (6PD-U)
EPA
1445 Ross Avenue
Dallas, TX 75202

(ADEQ) Mr. James Shell
Division Chief
Regulated Storage Tank Division
Arkansas Department of Environmental Quality
P.O. Box 8913
Little Rock, AR 72209

IV. PROPOSED CIVIL PENALTY

Section 9006 of the Solid Waste Disposal Act, 42 U.S.C. § 6991e, authorizes a civil penalty of up to ELEVEN THOUSAND DOLLARS ($11,000.00) per day for each violation of the underground storage tank regulations. The computation of the penalty is based upon the Underground Storage Tank Penalty Policy, a copy of which is attached hereto.

Pursuant to Section 9006 of the Solid Waste Disposal Act, 42 U.S.C. § 6991e, Complainant proposes to assess against Respondent a civil penalty totaling TWO HUNDRED, SIXTY THOUSAND, SIX HUNDRED TWENTY-FOUR DOLLARS AND NO CENTS ($260,624). The computation of this amount is based on the seriousness of the

violations, violator-specific adjustments, environmental sensitivity, number of days of noncompliance, economic benefit of noncompliance and the November 1990 UST Civil Penalty Policy. The penalties were calculated as follows:

COUNT 1A: **Failure to provide adequate corrosion protection for metal components of "new" underground piping**

1.	Per facility or per number of lines/tanks		3 (USTs)
2.	Gravity based penalty from matrix -		$750
	(a) Potential for harm - Major		
	(b) Extent of deviation - Moderate		
3.	Total violator specific adjustments -		0
	(a) Degree of cooperation/noncooperation	0% x No.2	
	(b) Degree of willfulness or negligence,	0% x No.2	
	(c) History of noncompliance	0% x No.2	
	(d) Other unique factors	0% x No.2	
4.	Environmental sensitivity multiplier		1.0
	Low - 1.0		
	Moderate - 1.5		
	High - 2.0		
5.	Days of noncompliance multiplier (08/01/98 to 02/14/02 = 1,293 Days)		5.5
	0 - 90 1.0		
	91 - 180 1.5		
	181 - 270 2.0		
	271 - 365 2.5		
	Each additional 6 months or fraction thereof - add 0.5		
6.	Economic Benefit		$211.06
	Avoided costs $0		
	Delayed costs $211.06		

Calculation:
No.1 x [(No.2 +/- No.3) x No.4 x No.5 + No.6]=$(Penalty)
3 x [($750+/- 0) x 1.0 x 5.5 + $211.06]= $13,008.18
Proposed Penalty for Count 1A = $13,008

COUNT 1B: **Failure to provide adequate corrosion protection for metal components of "new" underground piping**

1. Per facility or per number of lines/tanks 5 (USTs)
2. Gravity based penalty from matrix - $750
   (a) Potential for harm - Major
   (b) Extent of deviation - Moderate
3. Total violator specific adjustments - 0
   (a) Degree of cooperation/noncooperation 0% x No.2
   (b) Degree of willfulness or negligence, 0% x No.2
   (c) History of noncompliance 0% x No.2
   (d) Other unique factors 0% x No.2

4. Environmental sensitivity multiplier 1.0

   Low - 1.0
   Moderate - 1.5
   High - 2.0

5. Days of noncompliance multiplier 5.5
   (8/01/98 to 01/31/02 = 1,279 Days)

   0 - 90 1.0
   91 - 180 1.5
   181 - 270 2.0
   271 - 365 2.5
   Each additional 6 months or fraction thereof - add 0.5

6. Economic Benefit $209.28
   Avoided costs $0
   Delayed costs $209.28

Calculation:
No.1 x [(No.2 +/- No.3) x No.4 x No.5 + No.6]=$(Penalty)
5 x [($750+/- 0) x 1.0 x 5.0 + $209.28]= $21,671.38
Proposed Penalty for Count 1B = $21,671

COUNT 2: **Failure to provide adequate corrosion protection for metal components of "Existing" underground piping**

1. Per facility or per number of lines/tanks 7
2. Gravity based penalty from matrix - $750
   (a) Potential for harm - Major
   (b) Extent of deviation - Moderate
3. Total violator specific adjustments - $0
   (a) Degree of cooperation/noncooperation 0% x No.2
   (b) Degree of willfulness or negligence 0% x No.2
   (c) History of noncompliance 0% x No.2
   (d) Other unique factors 0% x No.2

4. Environmental sensitivity multiplier 1.0

Low - 1.0
Moderate - 1.5
High - 2.0

5. Days of noncompliance multiplier 5.0
(12/22/98 to 02/14/02=1,150 days)

0 - 90 1.0
91 - 180 1.5
181 - 270 2.0
271 - 365 2.5
Each additional 6 months or fraction thereof - add 0.5

6. Economic Benefit $184.87

Avoided costs $0
Delayed costs $184.87

Calculation:
No.1 x [(No.2 +/- No.3) x No.4 x No.5 + No.6]=$(Penalty)
7 x [($750 +/- $0) x 1.0 x 5.0 + $184.87]= $27,544.06
Proposed Penalty for Count 2 = $27,544

COUNT 3: **Failure to operate cathodic protection system continuously**

1. Per facility or per number of lines/tanks 5(USTs)
2. Gravity based penalty from matrix $1,500
   (a) Potential for harm - Major
   (b) Extent of deviation - Major

3. Total violator specific adjustments $0
   (a) Degree of cooperation/noncooperation 0% x No.2
   (b) Degree of willfulness or negligence 0% x No.2
   (c) History of noncompliance 0% x No.2
   (d) Other unique factors 0% x No.2

4. Environmental sensitivity multiplier 1.0

Low - 1.0
Moderate - 1.5
High - 2.0

5. Days of noncompliance multiplier 5.0
(12/22/98 to 02/15/02=1,151 Days)

0 - 90 1.0

91 - 180 1.5
181 - 270 2.0
271 - 365 2.5
Each additional 6 months or fraction thereof - add 0.5

6. Economic Benefit $477.59
Avoided costs $477.59
Delayed costs $0

Calculation:
No.1 x [(No.2 +/- No.3) x No.4 x No.5 + No.6]=$(Penalty)
5 x [($1,500 +/-$0) x 1.0 x 5.0 + $477.59]=$39,887.97
Proposed Penalty for Count 3 = $39,888

COUNT 4: Failure to provide spill and overfill protection

1. Per facility or per number of lines/tanks 5 (USTs)
2. Gravity based penalty from matrix $1,500
   (a) Potential for harm - Major
   (b) Extent of deviation - Major

3. Total violator specific adjustments $0
   (a) Degree of cooperation/noncooperation 0% x No.2
   (b) Degree of willfulness or negligence 0% x No.2
   (c) History of noncompliance 0% x No.2
   (d) Other unique factors 0% x No.2

4. Environmental sensitivity multiplier 1.0

   Low - 1.0
   Moderate - 1.5
   High - 2.0

5. Days of noncompliance multiplier 5.0
   (12/22/98 to 02/15/02 = 1,151 Days)

   0 - 90 1.0
   91 - 180 1.5
   181 - 270 2.0
   271 - 365 2.5
   Each additional 6 months or fraction thereof - add 0.5

6. Economic Benefit $277.49
   Avoided costs $0
   Delayed costs $277.49

Calculation:

No.1 x [(No.2 +/- No.3) x No.4 x No. 5 + No.6]=$(Penalty)
5 x [($1,500 +/- $0) x 1 x 5.0 + $277.49= $38887.46
Proposed Penalty for Count 4 = $38,888

COUNT 5A: Failure to test corrosion protection

1.	Per facility or per number of lines/tanks		1(Fac)
2.	Gravity based penalty from matrix		$1,500
	(a) Potential for harm - Major		
	(b) Extent of deviation - Major		
3.	Total violator specific adjustments		$0
	(a) Degree of cooperation/noncooperation	0% x No.2	
	(b) Degree of willfulness or negligence	0% x No.2	
	(c) History of noncompliance	0% x No.2	
	(d) Other unique factors	0% x No.2	
4.	Environmental sensitivity multiplier		1.0

Low - 1.0
Moderate - 1.5
High - 2.0

5.	Days of noncompliance multiplier	5.5
	(08/01/98 to 02/13/02 = 1,292 Days)	

0 - 90 1.0
91 - 180 1.5
181 - 270 2.0
271 - 365 2.5
Each additional 6 months or fraction thereof - add 0.5

6.	Economic Benefit	$0

Avoided costs $0
Delayed costs $0

Calculation:
No.1 x [(No.2 +/- No.3) x No.4 x No. 5 + No.6]=$(Penalty)
1 x [($1,500 +/- $0) x 1 x 5.5 + $0]= $8,250
Proposed Penalty for Count 5A = $8,250

COUNT 5B: Failure to test corrosion protection

1.	Per facility or per number of lines/tanks	1(Fac)
2.	Gravity based penalty from matrix	$1,500
	(a) Potential for harm - Major	

(b) Extent of deviation - Major

3. Total violator specific adjustments $0
   (a) Degree of cooperation/noncooperation 0% x No.2
   (b) Degree of willfulness or negligence 0% x No.2
   (c) History of noncompliance 0% x No.2
   (d) Other unique factors 0% x No.2

4. Environmental sensitivity multiplier 1.0

   Low - 1.0
   Moderate - 1.5
   High - 2.0

5. Days of noncompliance multiplier 5.0
   (12/22/98 to 02/15/02 = 1,151 Days)

   0 - 90 1.0
   91 - 180 1.5
   181 - 270 2.0
   271 - 365 2.5
   Each additional 6 months or fraction thereof - add 0.5

6. Economic Benefit $0

   Avoided costs $0
   Delayed costs $0

Calculation:
No.1 x [(No.2 +/- No.3) x No.4 x No. 5 + No.6]=$(Penalty)
1 x [($1,500 +/- $0) x 1 x 5.0 + $0]= $7,500
Proposed Penalty for Count 5B = $7,500

COUNT 5C: Failure to test corrosion protection system

1. Per facility or per number of lines/tanks 1(Fac)
2. Gravity based penalty from matrix $1,500
   (a) Potential for harm - Major
   (b) Extent of deviation - Major

3. Total violator specific adjustments $0
   (a) Degree of cooperation/noncooperation 0% x No.2
   (b) Degree of willfulness or negligence 0% x No.2
   (c) History of noncompliance 0% x No.2
   (d) Other unique factors 0% x No.2

4. Environmental sensitivity multiplier 1.0

Low - 1.0
Moderate - 1.5
High - 2.0

5. Days of noncompliance multiplier 5.5
(08/01/98 to 02/14/02 = 1,294 Days)

0 - 90 1.0
91 - 180 1.5
181 - 270 2.0
271 - 365 2.5
Each additional 6 months or fraction thereof - add 0.5

6. Economic Benefit $0

Avoided costs $0
Delayed costs $0

Calculation:
No.1 x [(No.2 +/- No.3) x No.4 x No. 5 + No.6]=$(Penalty)
1 x [($1,500 +/- $0) x 1 x 5.5 + $0]= $8,250
Proposed Penalty for Count 5C = $8,250

COUNT 5D: Failure to test corrosion protection

1. Per facility or per number of lines/tanks 1(Fac)
2. Gravity based penalty from matrix $1,500
   (a) Potential for harm - Major
   (b) Extent of deviation - Major

3. Total violator specific adjustments $0
   (a) Degree of cooperation/noncooperation 0% x No.2
   (b) Degree of willfulness or negligence 0% x No.2
   (c) History of noncompliance 0% x No.2
   (d) Other unique factors 0% x No.2

4. Environmental sensitivity multiplier 1.0

Low - 1.0
Moderate - 1.5
High - 2.0

5. Days of noncompliance multiplier 5.5
(08/01/98 to 02/13/02 = 1,292 Days)

0 - 90 1.0

91 - 180 1.5
181 - 270 2.0
271 - 365 2.5
Each additional 6 months or fraction thereof - add 0.5

6. Economic Benefit $0

Avoided costs $0
Delayed costs $0

Calculation:
No.1 x [(No.2 +/- No.3) x No.4 x No. 5 + No.6]=$(Penalty)
1 x [($1,500 +/- $0) x 1 x 5.5 + $0]= $8,250
Proposed Penalty for Count 5D = $8,250

COUNT 6: **Failure to demonstrate adequate financial responsibility**

1. Per facility or per number of lines/tanks 1(FAC.)
2. Gravity based penalty from matrix $750
   (a) Potential for harm - Moderate
   (b) Extent of deviation - Major
3. Total violator specific adjustments $0
   (a) Degree of cooperation/noncooperation 0% x No.2
   (b) Degree of willfulness or negligence 0% x No.2
   (c) History of noncompliance 0% x No.2
   (d) Other unique factors 0% x No.2
4. Environmental sensitivity multiplier 1.0

   Low - 1.0
   Moderate - 1.5
   High - 2.0

5. Days of noncompliance multiplier 1.5
   (6/30/01 to 10/15/01=107 Days)

   0 - 90 1.0
   91 - 180 1.5
   181 - 270 2.0
   271 - 365 2.5
   Each additional 6 months or fraction thereof - add 0.5

6. Economic Benefit $0

   Avoided costs $0
   Delayed costs $0

Calculation:
No.1 x [(No.2 +/- No.3) x No.4 x No. 5 + No.6]=$(Penalty)
1 x [($750 +/-$0) x 1 x 1.5+ $]= $1,125
Proposed Penalty for Count 6 = $1,125

COUNT 7A: Failure to provide adequate release detection method

1. Per facility or per number of lines/tanks 1(FAC.)
   2. Gravity based penalty from matrix $1,500
      (a) Potential for harm - Moderate
      (b) Extent of deviation - Major

   3. Total violator specific adjustments $0
      (a) Degree of cooperation/noncooperation 0% x No.2
      (b) Degree of willfulness or negligence 0% x No.2
      (c) History of noncompliance 0% x No.2
      (d) Other unique factors 0% x No.2

   4. Environmental sensitivity multiplier 1.0

      Low - 1.0
      Moderate - 1.5
      High - 2.0

   5. Days of noncompliance multiplier 2.5
      (02/13/01 to 02/13/02= 365 Days)

      0 - 90 1.0
      91 - 180 1.5
      181 - 270 2.0
      271 - 365 2.5
      Each additional 6 months or fraction thereof - add 0.5

   6. Economic Benefit $0

      Avoided costs $0
      Delayed costs $0

Calculation:
No.1 x [(No.2 +/- No.3) x No.4 x No. 5 + No.6]=$(Penalty)
1 x [($1,500 +/-$0) x 1 x 2.5+ $0]= $3,750
Proposed Penalty for Count 7A = $3,750

COUNT 7B: Failure to provide adequate release detection method

1. Per facility or per number of lines/tanks 1(FAC.)
   2. Gravity based penalty from matrix $1,500
      (a) Potential for harm - Moderate

(b) Extent of deviation - Major

3. Total violator specific adjustments $0
   (a) Degree of cooperation/noncooperation 0% x No.2
   (b) Degree of willfulness or negligence 0% x No.2
   (c) History of noncompliance 0% x No.2
   (d) Other unique factors 0% x No.2

4. Environmental sensitivity multiplier 1.0

   Low - 1.0
   Moderate - 1.5
   High - 2.0

5. Days of noncompliance multiplier 2.5
   (02/15/01 to 02/15/02= 365 Days)

   0 - 90 1.0
   91 - 180 1.5
   181 - 270 2.0
   271 - 365 2.5
   Each additional 6 months or fraction thereof - add 0.5

6. Economic Benefit $0

   Avoided costs $0
   Delayed costs $0

Calculation:
No.1 x [(No.2 +/- No.3) x No.4 x No. 5 + No.6]=$(Penalty)
1 x [($1,500 +/-$0) x 1 x 2.5+ $0]= $3,750
Proposed Penalty for Count 7B = $3,750

COUNT 7C: Failure to provide adequate release detection method

1. Per facility or per number of lines/tanks 1(FAC.)
2. Gravity based penalty from matrix $1,500
   (a) Potential for harm - Moderate
   (b) Extent of deviation - Major

3. Total violator specific adjustments $0
   (a) Degree of cooperation/noncooperation 0% x No.2
   (b) Degree of willfulness or negligence 0% x No.2
   (c) History of noncompliance 0% x No.2
   (d) Other unique factors 0% x No.2

4. Environmental sensitivity multiplier 1.0

Low - 1.0
Moderate - 1.5
High - 2.0

5. Days of noncompliance multiplier 2.5
(02/14/01 to 02/14/02= 365 Days)

0 - 90 1.0
91 - 180 1.5
181 - 270 2.0
271 - 365 2.5
Each additional 6 months or fraction thereof - add 0.5

6. Economic Benefit $0

Avoided costs $0
Delayed costs $0

Calculation:
No.1 x [(No.2 +/- No.3) x No.4 x No. 5 + No.6]=$(Penalty)
1 x [($1,500 +/-$0) x 1 x 2.5+ $0]= $3,750
Proposed Penalty for Count 7C = $3,750

COUNT 7D: Failure to provide adequate release detection method

1. Per facility or per number of lines/tanks 2(FAC.)
2. Gravity based penalty from matrix $1,500
   (a) Potential for harm - Moderate
   (b) Extent of deviation - Major

3. Total violator specific adjustments $0
   (a) Degree of cooperation/noncooperation 0% x No.2
   (b) Degree of willfulness or negligence 0% x No.2
   (c) History of noncompliance 0% x No.2
   (d) Other unique factors 0% x No.2

4. Environmental sensitivity multiplier 1.0

Low - 1.0
Moderate - 1.5
High - 2.0

5. Days of noncompliance multiplier 2.5
(01/31/01 to 01/31/02= 365 Days)

0 - 90 1.0

91 - 180 1.5
181 - 270 2.0
271 - 365 2.5
Each additional 6 months or fraction thereof - add 0.5

6. Economic Benefit $0

Avoided costs $0
Delayed costs $0

Calculation:
No.1 x [(No.2 +/- No.3) x No.4 x No. 5 + No.6]=$(Penalty)
2 x [($1,500 +/-$0) x 1 x 2.5+ $0]= $7,500
Proposed Penalty for Count 7D = $7,500

COUNT 8A: **Failure to provide adequate release detection method for piping**

1. Per facility or per number of lines/tanks 2(USTs)
2. Gravity based penalty from matrix $1,500
   (a) Potential for harm - Moderate
   (b) Extent of deviation - Major

3. Total violator specific adjustments $0
   (a) Degree of cooperation/noncooperation 0% x No.2
   (b) Degree of willfulness or negligence 0% x No.2
   (c) History of noncompliance 0% x No.2
   (d) Other unique factors 0% x No.2

4. Environmental sensitivity multiplier 1.0

   Low - 1.0
   Moderate - 1.5
   High - 2.0

5. Days of noncompliance multiplier 2.5
   (02/13/01 to 02/13/02= 365 Days)

   0 - 90 1.0
   91 - 180 1.5
   181 - 270 2.0
   271 - 365 2.5
   Each additional 6 months or fraction thereof - add 0.5

6. Economic Benefit $0

   Avoided costs $0

Delayed costs $0 Calculation:
No.1 x [(No.2 +/- No.3) x No.4 x No. 5 + No.6]=$(Penalty)
2 x [($1,500 +/-$0) x 1 x 2.5+ $0]= $7,500
Proposed Penalty for Count 8A = $7,500

COUNT 8B: **Failure to provide adequate release detection method for piping**

1. Per facility or per number of lines/tanks 8(USTs)
   2. Gravity based penalty from matrix $1,500
      (a) Potential for harm - Moderate
      (b) Extent of deviation - Major

   3. Total violator specific adjustments $0
      (a) Degree of cooperation/noncooperation 0% x No.2
      (b) Degree of willfulness or negligence 0% x No.2
      (c) History of noncompliance 0% x No.2
      (d) Other unique factors 0% x No.2

   4. Environmental sensitivity multiplier 1.0

      Low - 1.0
      Moderate - 1.5
      High - 2.0

   5. Days of noncompliance multiplier 2.5
      (02/15/01 to 02/15/02= 365 Days)

      0 - 90 1.0
      91 - 180 1.5
      181 - 270 2.0
      271 - 365 2.5
      Each additional 6 months or fraction thereof - add 0.5

   6. Economic Benefit $0

      Avoided costs $0
      Delayed costs $0

   Calculation:
   No.1 x [(No.2 +/- No.3) x No.4 x No. 5 + No.6]=$(Penalty)
   8 x [($1,500 +/-$0) x 1 x 2.5+ $0]= $30,000
   Proposed Penalty for Count 8B = $30,000

COUNT 8C: **Failure to provide adequate release detection method for piping**

1. Per facility or per number of lines/tanks 3(USTs)
   2. Gravity based penalty from matrix $1,500
      (a) Potential for harm - Moderate
      (b) Extent of deviation - Major

   3. Total violator specific adjustments $0
      (a) Degree of cooperation/noncooperation 0% x No.2
      (b) Degree of willfulness or negligence 0% x No.2
      (c) History of noncompliance 0% x No.2
      (d) Other unique factors 0% x No.2

   4. Environmental sensitivity multiplier 1.0

      Low - 1.0
      Moderate - 1.5
      High - 2.0

   5. Days of noncompliance multiplier 2.5
      (02/14/01 to 02/14/02= 365 Days)

      0 - 90 1.0
      91 - 180 1.5
      181 - 270 2.0
      271 - 365 2.5
      Each additional 6 months or fraction thereof - add 0.5

   6. Economic Benefit $0

      Avoided costs $0
      Delayed costs $0

   Calculation:
   No.1 x [(No.2 +/- No.3) x No.4 x No. 5 + No.6]=$(Penalty)
   3 x [($1,500 +/-$0) x 1 x 2.5+ $0]= $11,250
   Proposed Penalty for Count 8C = $11,250

COUNT 8D: Failure to provide adequate release detection method for piping

1. Per facility or per number of lines/tanks 5(USTs)
   2. Gravity based penalty from matrix $1,500
      (a) Potential for harm - Moderate
      (b) Extent of deviation - Major

   3. Total violator specific adjustments $0
      (a) Degree of

cooperation/noncooperation 0% x No.2
(b) Degree of willfulness or negligence 0% x No.2
(c) History of noncompliance 0% x No.2
(d) Other unique factors 0% x No.2

4. Environmental sensitivity multiplier 1.0

Low - 1.0
Moderate - 1.5
High - 2.0

5. Days of noncompliance multiplier 2.5
(01/31/01 to 01/31/02= 365 Days)

0 - 90 1.0
91 - 180 1.5
181 - 270 2.0
271 - 365 2.5
Each additional 6 months or fraction thereof - add 0.5

6. Economic Benefit $0

Avoided costs $0
Delayed costs $0

Calculation:
No.1 x [(No.2 +/- No.3) x No.4 x No. 5 + No.6]=$(Penalty)
5 x [($1,500 +/-$0) x 1 x 2.5+ $0]= $18,750
Proposed Penalty for Count 8D = $18,750

SUMMARY OF PROPOSED PENALTIES

COUNT OR SUB-COUNT	PENALTY PER COUNT OR SUB-COUNT	VIOLATION
1A	$13,008.18	Failure to provide adequate corrosion protection for metal components of “new” underground piping
1B	$21,671.38	Failure to provide adequate corrosion protection for metal components of “new” underground piping
2	$27,544.06	Failure to provide adequate corrosion protection for metal components of “Existing” underground piping
3	$39,887.97	Failure to operate cathodic protection system continuously
4	$38,887.46	Failure to provide spill and overfill prevention equipment
5A	$8,250.00	Failure to monitor corrosion protection system within 6 months of installation
5B	$7,500.00	Failure to monitor corrosion protection system within 6 months of installation
5C	$8,250.00	Failure to monitor corrosion protection system within 6 months of installation
5D	$8,250.00	Failure to monitor corrosion protection system within 6 months of installation
6	$1,125.00	Failure to provide adequate Financial Responsibility Requirements.
7A	$3,750.00	Failure to provide release detection method for tank
7B	$3,750.00	Failure to provide release detection method for tank
7C	$3,750.00	Failure to provide release detection method for tank
7D	$7,500.00	Failure to provide release detection method for tank
8A	$7,500.00	Failure to provide release detection method for piping
8B	$30,000.00	Failure to provide release detection method for piping
8C	$11,250.00	Failure to provide release detection method for piping
8D	$18,750.00	Failure to provide release detection method for piping
	$260,624.05	
TOTAL	**$ 260,624**	(Rounded)

PROPOSED PENALTY= $260,624

The payment shall be made by mailing a money order, cashier's check, or certified check payable to the Treasurer of the United States, within 30 days of the effective date of this document to the following address:

Regional Hearing Clerk (6C)
U.S. EPA, Region 6
P.O. Box 360582M
Pittsburgh, PA 15251

Docket No. SWDA-06-2003-5112 should be clearly typed on the check to ensure credit. Respondent shall send simultaneous notices of such payments, including copies of the money order, cashier's check or certified check to the following:

(1) Mr. Willie Kelley, Chief
UST/Solid Waste Section
Multimedia Planning and
Permitting Division(6PD-U)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202

(2) Mr. Jonathan Weisberg
Assistant Regional Counsel (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202

V. FAILURE TO COMPLY

In the event Respondent fails to comply with any provision of the compliance order, then in accordance with 42 U.S.C. § 6996(a)(3), 42 U.S.C. § 9006(a)(3), Respondent shall be liable for a civil penalty of not more than $27,500 for each day of continued noncompliance.

VI. NOTICE OF OPPORTUNITY FOR HEARING

Where Respondent (1) contests any material fact upon which the Complaint is based, (2) contends the amount of the penalty proposed in the Complaint is inappropriate, or (3) contends it is entitled to judgment as a matter of law, Respondent shall file a written Answer to the Complaint with the Regional Hearing Clerk, Region 6, no later than twenty (20) days after the service of this Complaint.

The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. Where the Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. Failure of Respondent, to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation.

The Answer shall also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense, (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested. A hearing upon the issues raised by the Complaint and Answer shall be held upon request of the Respondent in the Answer.

The hearing, if requested, will be conducted in accordance with the provisions of the Administrative Procedures Act (5

U.S.C. 552 et seq., and the Consolidated Rules of Practice, codified at 40 CFR Part 22. A copy of the Consolidated Rules of Practice is enclosed. Respondent may retain counsel to represent them at the hearing.

The Regional Hearing Clerk's address is:

Regional Hearing Clerk (6RC-HO)
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

VII. DEFAULT ORDER

If Respondent fails to file an Answer within thirty (30) days after the date of service of this Complaint, Respondent may be found to be in default pursuant to 40 CFR § 22.17. For purposes of this action, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondents' right to a hearing under 40 CFR § 22.15 concerning such factual allegations. The proposed penalty shall become due and payable by Respondent without further proceedings sixty (60) days after issuance of a Final Order upon default. Upon issuance of the Final Order upon default, Respondent must immediately comply with the "Order" set forth in the Complaint.

VIII. SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, it may confer with Complainant concerning settlement. The EPA encourages settlement consistent with the provisions and objectives of the applicable regulations. A request for a settlement conference does not extend the thirty (30) day period during which the

written Answer and a request for hearing must be submitted. The settlement conference procedures may be pursued as an alternative to and simultaneous with the formal hearing procedures. Respondent may appear at the settlement conference and/or be represented by counsel.

Any settlement reached by the parties shall be set forth in a written Consent Agreement and Final Order signed by the Regional Administrator, EPA Region 6, in accordance with 40 CFR § 22.18. The issuance of a Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated therein.

To explore the possibility of settlement in this matter, contact the attorney assigned to this case, Mr. Jonathan Weisberg, who can be reached at (214) 665-2180 or in writing to Ms. Tracie Donaldson, Enforcement Officer, UST/Solid Waste Section (6PD-U), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

_____ _____

Carl E. Edlund, P.E.
Division Director
Multimedia Planning and Permitting Division
U.S. EPA, Region 6

Date

ATTACHMENT A

Cecil Dale, Jr., Wholesale Distributors, Inc. - Summary of USTs		
STATE ID#	**NAME/LOCATION**	**TANKS**
23000118	Pepper Pan Food Mart 2820 Prince Street Conway, AR	2
42000076	Paris Exxon Walnut Street Paris, AR	8
75000058	Pepper Pan Food Mart Second and Union Dardanelle, AR	3
75000063	Pepper Pan Food Mart 501 Main Street Danville, AR	3
75001623	Plainview Superette Main Street Plainview, AR	2
	TOTAL TANKS BY GRADE	18
	TOTAL TANKS INSPECTED	18

ATTACHMENT B

Cecil Dale, Jr., Wholesale Distributors, Inc. -Violation/Count per UST (T) or Facility (F)																				
			COUNTS																	
NO.	FACILITY	Tank	1A	1B	2	3	4	5A	5B	5C	5D	6	7A	7B	7C	7D	8A	8B	8C	8D
23000118	**Pepper Pan - Conway** *(10K,'95)*	1						F					F				T			
	(10K,'95)	2															T			
42000076	**Paris Exxon** *(Steel, 4K, Inst.'81)*	1			T				F					F				T		
	(Steel, 4K, Inst. '81)	2			T													T		
	(Composite, 4K, Inst. '91)	3																T		
	(Front side, old tanks, not regist.)	4			T	T	T					F						T		
	(Front side, old tanks, not regist.)	5			T	T	T											T		
	(Front side, old tanks, not regist.)	6			T	T	T											T		
	(Front side, old tanks, not regist.)	7			T	T	T											T		
	(Front side, old tanks, not regist.)	8			T	T	T											T		
75000058	**PepperPan - Dardanelle** *(10K'90)*	1	T							F					F				T	
	(8K'90)	2	T																T	
	(6K'90)	3	T																T	
75000063	**Pepper Pan - Danville** *(8K '90)*	1		T							F					F				T
	(6K '90)	2		T																T
	(6K '90)	3		T																T
75001623	**Plainview Superette** *(6K '94)*	1		T							F					F				T
	(6K '94)	2		T																T
	TOTAL VIOL.	18	3	5	7	5	5	1	1	1	2	1	1	1	1	2	2	8	3	5

Count 1A	Failure to provide adequate corrosion protection for metal components of “new” underground piping
Count 1B	Failure to provide adequate corrosion protection for metal components of “new” underground piping
Count 2	Failure to provide adequate corrosion protection for metal components of “Existing” underground piping
Count 3	Failure to operate cathodic protection system continuously
Count 4	Failure to provide spill and overfill prevention equipment
Count 5A	Failure to monitor corrosion protection system within 6 months of installation
Count 5B	Failure to monitor corrosion protection system within 6 months of installation
Count 5C	Failure to monitor corrosion protection system within 6 months of installation
Count 5D	Failure to monitor corrosion protection system within 6 months of installation
Count 6	Failure to provide adequate financial responsibility requirements
Count 7A	Failure to provide adequate release detection method for UST
Count 7B	Failure to provide adequate release detection method for UST
Count 7C	Failure to provide adequate release detection method for UST
Count 7D	Failure to provide adequate release detection method for UST
Count 8A	Failure to provide release detection for piping components
Count 8B	Failure to provide release detection for piping components
Count 8C	Failure to provide release detection for piping components
Count 8D	Failure to provide release detection for piping components

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing concerning **Cecil Dale, Jr., Wholesale Distributors, Inc., 1819 South Knoxville Avenue, Russelville, AR 72802-2668, Docket No. SWDA 06-2003-5112**, was filed with the Regional Hearing Clerk, EPA Region 6, Dallas, Texas, and a true and correct copy of such Complaint, together with a copy of the Consolidated Rules of Practice (40 CFR Part 22) was placed in the United States mail, postage prepaid, certified mail, return receipt requested, on this _____ day of _____, 2003, addressed to the following:

Cecil Dale, Jr., President
Cecil Dale, Jr., Wholesale Distributors, Inc.
1819 South Knoxville Avenue
Russelville, AR 72802-2668

_____